

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

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IN RE: SMITH & NEPHEW  
BIRMINGHAM HIP RESURFACING  
(BHR) HIP IMPLANT PRODUCTS  
LIABILITY LITIGATION

MDL-17-md-2775  
Hon. Catherine C. Blake

This Document Relates to  
Case No. 1:18-cv-19

**DIRECT FILED SHORT  
FORM COMPLAINT**

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**SHORT FORM COMPLAINT**

1. Plaintiff, Carolyn T. Dutton, states and brings this civil action in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff is filing this Short Form Complaint pursuant to CMO No. 3, entered by this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff is a resident and citizen of the state of Michigan and claims damages as set forth below.

3. Federal jurisdiction is proper based on diversity of citizenship.

4. The Federal District in which Plaintiff's initial implants took place: Eastern District of Michigan.

5. The Federal District in which Plaintiff's revision surgery took place: Eastern District of Michigan.

6. Plaintiff brings this action *[check the applicable designation]*:

☒ On behalf of [herself]

**FACTUAL ALLEGATIONS**

7. On or about May 1, 2009, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's (RIGHT) hip.

8. Plaintiff's (RIGHT) BHR implant surgery was performed at St. John Hospital and Medical Center in Detroit, Michigan by Richard T. Perry, M.D.

9. Plaintiff underwent medically-indicated revision of the (RIGHT) BHR hip implant on or about April 27, 2017.

10. Plaintiff's revision surgery performed by Richard T. Perry, M.D. at St. John Hospital and Medical Center in Detroit, Michigan.

11. Plaintiff suffered the following complications, injuries, and/or indications, some or all of which made revision surgery medically necessary: metallosis; elevated chromium and cobalt levels.

12. [IF BILATERAL]: Plaintiff's (LEFT) BHR implant surgery was performed at St. John Hospital and Medical Center by Richard T. Perry, M.D.

13. [IF BILATERAL]: On or about July 01, 2011, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's (LEFT) hip.

14. [IF BILATERAL]: Plaintiff's medical provider has recommended revision of Plaintiff's (LEFT) hip which is scheduled for later this year   X  . (checkbox)]

15. Plaintiff adopts the allegations of the Master Amended Consolidated Complaint ("MACC") filed August 11, 2017, and any and all amendments to the MACC.

**ALLEGATIONS AS TO INJURIES**

16. (a) Plaintiff claims damages as a result of (check all that are applicable):

<u>  X  </u>	INJURY TO HERSELF
<u>      </u>	INJURY TO THE PERSON REPRESENTED
<u>      </u>	WRONGFUL DEATH
<u>      </u>	SURVIVORSHIP ACTION
<u>  X  </u>	ECONOMIC LOSS

17. Defendant, by its actions or inactions, proximately caused the injuries to Plaintiff.

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

18. The following claims and allegations are asserted by Plaintiff and are herein adopted by reference under the laws of the following state (check all that are applicable):

  X   COUNT I (strict products liability: Michigan)  
  X   COUNT II (negligence: Michigan)  
  X   COUNT III (strict products liability failure to warn: Michigan)  
  X   COUNT IV (negligent failure to warn: Michigan)  
  X   COUNT V (negligent misrepresentation: Michigan)  
  X   COUNT VI (negligence per se: Michigan)  
  X   COUNT VII (breach of express warranties: Michigan)  
  X   COUNT VIII (manufacturing defect: Michigan)  
  X   COUNT IX (punitive damages: Michigan)

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;

5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement; and
7. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all claims in Complaint so triable.

Dated: January 3, 2018

Respectfully submitted,

**JONES WARD PLC**

s/ Alex C. Davis

Alex C. Davis

Jasper D. Ward IV

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*Counsel for Plaintiff*